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Filing date: **05/30/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91167514
Party	Defendant Intelius Inc. Intelius Inc. 500 108th Avenue NE, Suite 1660 Bellevue, WA 98004
Correspondence Address	STEVEN B. WINTERS LANE POWELL SPEARS LUBERSKY LLP 1420 FIFTH AVENUE STE 4100 SEATTLE, WA 98101-2338
Submission	Motion to Dismiss - Rule 12(b)
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Date	05/30/2006
Attachments	Notice and Motion.pdf (5 pages)(129297 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application No. 78/210,639
For the mark INTELIFINDER
Filing Date February 4, 2003
Published in the Official Gazette on July 12, 2005

Vantage Technologies Knowledge
Assessment, LLC,

Opposer,

Opposition No. 91167514

v.

Intelius, Inc.,

Applicant

APPLICANT'S NOTICE OF TERMINATION OF CANCELLATION
AND MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to this Board's Order dated January 9, 2006, Applicant, Intelius, Inc., hereby provides notice that the Board terminated Cancellation No. 92042948 on May 11, 2006, entering judgment in favor of the petitioner, Intelius. In addition, pursuant to 37 CFR §2.116 and FRCP 12(c), Applicant hereby moves for judgment on the pleadings in this Opposition because the undisputed facts reveal that Opposer lacks standing and enforceable trademark rights.

The Board should dismiss this Opposition on grounds that Opposer lacks standing and enforceable trademark rights, and in support thereof Applicant states as follows:

1. This proceeding was suspended pursuant to the Board's Order dated January 9, 2006, pending the outcome of the cancellation proceeding captioned *Intelius Inc. v. Vantage Technology Holdings LLC*, Cancellation No. 92042948 (the "Cancellation"). The Cancellation involved the INTELIFINDER mark, Registration No. 1,908,265, allegedly owned by Vantage Technology Holdings LLC. Registrant failed to renew its trademark registration and

Registration No. 1,908,265 was cancelled on May 6, 2006. On May 11, 2006, the Board entered judgment against the Registrant on Petitioner's claim of abandonment. A copy of that judgment order is attached as Exhibit A.

2. Opposer based this Opposition on its alleged rights as a licensee of the INTELLIFINDER trademark, former Registration No. 1,908,265. The TTAB ruled that the INTELLIFINDER mark had been abandoned by the Registrant/licensor, Vantage Technology Holdings LLC, and cancelled the registration. Therefore, the INTELLIFINDER mark is invalid due to abandonment and Opposer/licensee does not have standing to bring this Opposition based upon the registered mark.

3. Opposer did not allege common law rights in the INTELLIFINDER mark in its Notice of Opposition filed November 9, 2005. Opposer is barred from asserting common law rights based on the principles that: (a) the licensee's use inures to the benefit of the licensor, and (b) the licensee is estopped from challenging the validity of the licensor's rights in the mark.

4. Opposer claims to be a licensee of the INTELLIFINDER mark and therefore does not have valid rights in the INTELLIFINDER mark at common law. The licensee's use of the mark inures to the benefit of the licensor, and the licensee acquires no ownership rights in the mark itself. *See J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition* § 18:52, at 18-93 (4th ed. 2006).


5. Under the doctrine of licensee estoppel, Opposer/licensee cannot challenge the validity of the licensor's mark or licensor's title to the mark. *See McCarthy*, § 18:63, at 18-110 to 18-113. Opposer could not have been using the INTELLIFINDER mark as a licensee, as alleged in its Notice of Opposition, and yet at the same time acquiring common law rights in the

mark. Therefore, Opposer is barred from asserting common law rights in the mark by the doctrine of licensee estoppel.

For the foregoing reasons, the Board should dismiss this Opposition with prejudice and enter judgment in favor of Applicant.

RESPECTFULLY SUBMITTED this 30th day of May, 2006.

LANE POWELL PC

By 


Steven B. Winters, WSBA No. 22393
Stephanie J. Simmons, WSBA No. 30154

Attorneys for Applicant, Intelius, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Applicant's Notice of Termination of Cancellation and Motion for Judgment on the Pleadings* was sent via facsimile and first class mail to the following counsel of record for Opposer, Vantage Technologies Knowledge Assessment, LLC, on May 30, 2006:

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By 
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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

cv

Mailed: May 11, 2006

Cancellation No. 92042948

INTELIUS INC.

v.

VANTAGE TECHNOLOGY HOLDINGS,
LLC

Clara Vela, Paralegal Specialist

On February 22, 2006 the Board issued an order to show cause under Trademark Rule 2.134(b) in view of respondent's failure to renew its Registration No. 1908265 under Section 9 of the Trademark Act.

No response to the order has been received.

In view thereof, and pursuant to Trademark Rule 2.134(b), judgment is hereby entered against respondent, and the petition to cancel is granted.

The cancellation accordingly stands, and no further action is necessary.

*By the Trademark Trial
and Appeal Board*

EXHIBIT A